

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

ROBERT E. WHEELER,

Appellant.

DOCKET NUMBER WD76448

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 19, 2014

APPEAL FROM

The Circuit Court of Caldwell County, Missouri
The Honorable R. Brent Elliott, Judge

JUDGES

Special Division: Pfeiffer, P.J., Witt, J., and Fischer, Sp.J.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
Gregory L. Barnes, Assistant Attorney General
Jefferson City, MO

Attorneys for Respondent,

Ellen H. Flottman, Appellate District Defender
Margaret M. Johnston, Assistant Public Defender
Columbia, MO

Attorneys for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
 Respondent,)
 v.) **OPINION FILED:**
) **August 19, 2014**
 ROBERT E. WHEELER,)
)
 Appellant.)

WD76448

Caldwell County

Before Special Division Judges: Mark D. Pfeiffer, Presiding Judge, Gary D. Witt, Judge, and Zel M. Fischer, Special Judge

A jury found Robert E. Wheeler (“Wheeler”) guilty of driving while intoxicated (“DWI”). Wheeler appeals the judgment of the Circuit Court of Caldwell County, Missouri (“trial court”), sentencing him as a persistent DWI offender. Wheeler challenges whether the trial court actually found him to be a persistent DWI offender and whether the evidence was sufficient to prove his persistent DWI offender status.

AFFIRMED.

Special Division holds:

Wheeler was charged as a persistent offender, class D felony, and upon his DWI conviction by the jury, was sentenced to four years imprisonment for committing a class D felony, an enhanced sentence reserved for persistent offenders. Thus, by sentencing Wheeler to four years, the trial court effectively found that Wheeler was a persistent offender and sentenced him accordingly, as it was authorized to do.

As to Wheeler’s suggestion that no substantial evidence supported such a persistent offender status finding by the trial court, Wheeler ignores his *admission* to facts supporting such a finding. The record clearly reflects that Wheeler admitted at the pre-trial persistent offender status hearing that the prior convictions submitted by the State were accurate and that he was the person referred to therein. Wheeler made a judicial admission of his prior intoxication-related

convictions and thereby waived his right to object to the trial court's consideration of such convictions.

Furthermore, when the State offered Exhibit No. 9, which reflected two driving under the influence of alcohol convictions in Florida, into evidence for the purpose of enhancement and again after Wheeler admitted that the convictions were accurate, defense counsel affirmatively stated that she had no objections to the admission of Exhibit No. 9.

Although Wheeler's counsel challenges the content of Exhibit No. 9 as proving beyond a reasonable doubt that Wheeler was convicted of one of the two prior DWI offenses, this challenge to the evidence was waived as it was in the context of Wheeler previously *admitting* to the trial court that he was the individual referenced in Exhibit No. 9 that was the subject of two prior DWI *convictions*.

Opinion by: Mark D. Pfeiffer, Presiding Judge

August 19, 2014

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.